



W.P.No.16171 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No. 16171 of 2020
and W.M.P.No.20174 of 2020

- 1.K.Murugesan
- 2.M.Amsalakshmi
- 3.S.Maheswari
- 4.A.C.Perumal
- 5.G.Ravi
- 6.R.Rani
- 7.Rajkumar
- 8.N.Duraisamy
- 9.T.Jayaprakash
- 10.K.M.Saravanan
- 11.C.Raja
- 12.M.Gopal
- 13.K.Ravichandran
- 14.N.Kuppusamy
- 15.L.Gopalachari
- 16.Vaithi
- 17.C.Manickam
- 18.K.Subramani
- 19.R.Ranganathan
- 20.V.Lakshmi
- 21.G.Venkatesan
- 22.Krishnaveni
- 23.Mohan
- 24.K.Munirathnam
- 25.R.Anbazhagan
- 26.S.Vijayalakshmi

.. Petitioners

Versus



W.P.No.16171 of 2020

1.The Director of Town Panchayat
Kuralagam, Parrys Corner
Chennai – 18

2.The District Collector
Dharmapuri District
Dharmapuri

3.The Assistant Director of Town Panchayat
Collectorate, Dharmapuri
Dharmapuri District

4.The Executive Officer
Pennagaram Town Panchayat
Pennagaram, Dharmapuri District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to pass suitable orders by giving preferential allotment without conducting public auction in the proposal construction of the shopping complex at Pennagaram Bus Stand, Pennagaram, Dharmapuri District by way of disposing the written representation made by the petitioners on 16.10.2020.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.K.M.D.Muhilan for R1 to R3
Additional Government Pleader
Mr.E.Balamurugan for R4



W.P.No.16171 of 2020

ORDER

WEB COPY

This Writ Petition has been filed seeking to direct the respondents to pass suitable orders by giving preferential allotment without conducting public auction in the proposed construction of the shopping complex at Pennagaram Bus Stand, Pennagaram, Dharmapuri District by way of disposing the written representation made by the petitioners on 16.10.2020.

2. It is the grievance of the writ petitioner that the writ petitioners are running their petty/small shops in the Pennagaram Bus Stand, Pennagaram, Dharmapuri District. Originally, the vacant places were allotted, thereafter, new shops were constructed. Now, the vacant shops are taken over and the shopping complex have been constructed for allotment.

3. It is the contention of the learned counsel for the petitioners is that before the Division Bench of this Court, in W.A.No. 771 of 2016, the respondent Municipality has agreed to allot the shop to the existing licensees/petitioners herein on a preferential basis on the rent fixed by the Government. Now, however, the respondents are trying to auction the subject shops. Hence, this writ petition.



W.P.No.16171 of 2020

4. A Counter has been filed by the fourth respondent. The main contention of the learned Additional Government Pleader is that the preferential treatment without participating in open tender may lead to formation of cartel and influence the tender outcome adversely. Therefore, the shops may be allotted by conducting public auction. The petitioners are at liberty to participate in the open tender process on leasing of new shops, on par with general public, once ready for occupation. Hence, opposed this writ petition.

5. Heard both sides and perused the materials placed on record. The Division Bench of this Court in W.A.No.771 of 2016, by Judgment, dated 01.09.2016, taking note of the consensus reached by the shop keepers and the Municipality before the eviction of the tenants, recorded as follows:

“(i) The respondents shall continue as tenants, on the basis of the payment of rent, which can be enhanced from 01.04.2015 at the rate of 30%, as fixed by the Government of Tamil Nadu and all the respondent/tenants have agreed for the same to pay the enhanced rent.

(ii) In case, the shops occupied by the respondents/tenants are demolished by Pennagaram Town Panchayat, in future, on re-construction, the shops shall be allotted to the present



WEB COPY



W.P.No.16171 of 2020

respondents/tenants and the rent shall be fixed on the basis of the Government Rate and the respondents/tenants have also agreed to pay the rent fixed by the Government of Tamil Nadu at the time of allotment of the shops.

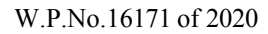
(iii) Till date, the respondents/tenants have been paying the amount towards rent for the shops to the Director of Town Panchayat and it is open to the Pennagaram Town Panchayat to collect the same from the Director of Town Panchayat, the amount deposited towards rent by the respondents/tenants.

(iv) It is open to the respondents/tenants to pay the rent to the town panchayat directly from the month of September 2016 and the same shall be received by the Pennagaram Town Panchayat.

(v) In the matter of allotment of the shops, on reconstruction, the respondent/tenants shall be given the first option to take the shops on the rental basis and if it is possible, the allotment of shops shall be done in the same place, where they are carrying on the business till date.

(vi) It is made clear that if the respondents/tenants are not willing to take the shops, it will be open to the Pennagaram Town Panchayat to let out the shops in auction and it is also open to the respondents/tenants to participate in the open auction.”

6. Now, it is not disputed that the shops are not constructed, which is in half stage, around 42 shops would be constructed. The main contention of the petitioner is that they are ready to pay the rent fixed by the Government, however, there cannot be any public auction, whereas, the respondents main contention is that the rent itself would be fixed only on the basis of highest



bid amount. Without any auction being conducted, the Government may not be in a position to fix the rent.

7. This Court is of the view that the submissions of the learned Additional Government Pleader is well-folded. If the shops are not brought on auction, it may even lead to formation of cartel and influence the tender outcome adversely. No doubt, the respondents have agreed to give the preferential treatment. As a matter of right, the petitioners, now cannot contend that the shop cannot be let out by way of public auction. Only in the public auction, the higher rent can be fetched.

8. Such view of the matter, in order to balance of the rights of the parties and as the preferential rights agreed by the respondents, the respondents may go public auction for 14 shops out of 40 shops and reserve 26 shops for preferential treatment to the petitioners. The highest bid amount in the auction conducted for 14 shops, can be taken as rent for allotment to the petitioner based on the preferential rights.

9. It is also made clear that for the 14 shops, the petitioner shall not be



W.P.No.16171 of 2020

entitled for participation in auction, since, their preferential rights is already reserved. Accordingly, the respondents shall proceed to conduct the public auction for 14 shops and based on the higher bid for the 14 shops, the rent can be fixed to the remaining 26 shops which is proposed to be levied to the petitioners as a preferential rights.

10. If the petitioners are not willing to agree for the higher bid amount as the rent, it is well open to the respondents to go for a public auction on their reserved area also. The petitioners also expressed their consent to take their shop on the highest bid amount within a period of seven days after the public auction. In the event of their failure to show their willingness to take the shop at the rent fetched in the auction, the respondents are at liberty to auction the shops in respect of shops, which the petitioners are not willing.

11. With the above directions, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

20.02.2023

dhk

7/8



W.P.No.16171 of 2020

Index : Yes / No

Neutral Citation : Yes/No

WEB COPY

N.SATHISH KUMAR, J.

dhk

To

1.The Director of Town Panchayat
Kuralagam, Parrys Corner
Chennai – 18

2.The District Collector
Dharmapuri District
Dharmapuri

3.The Assistant Director of Town Panchayat
Collectorate, Dharmapuri
Dharmapuri District

4.The Executive Officer
Pennagaram Town Panchayat
Pennagaram, Dharmapuri District.

W.P.No. 16171 of 2020

20.02.2023

8/8